

customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(4) **Customer-initiated change** - A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(5) **Telecommunications utility** - A telecommunications utility as defined in the Public Utility Regulatory Act (PURA) §§51.002(8) and (11), including but not limited to, dominant and non-dominant carriers, local exchange telephone service providers, interexchange telecommunications service providers, and resellers of local and interexchange telecommunications service.

(d) **Changes initiated by a telecommunications utility.** Before a carrier-initiated change order is processed, the telecommunications utility initiating the change (the prospective telecommunications utility) must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 Code of Federal Regulations §64.1100. In the case of a carrier-initiated change by written solicitation, the prospective telecommunications utility must obtain verification as specified in 47 Code of Federal Regulations §64.1150, and subsection (e) of this section, relating to Letters of Agency. The prospective telecommunications utility

must maintain records of all carrier-initiated changes, including verifications, for a period of 12 months and shall provide such records to the customer, if such customer challenges the change, and to the commission staff if it so requests. A carrier-initiated change order must be verified by one of the methods set out in paragraphs (1)-(4) of this subsection.

- (1) Verification may be obtained by written authorization from the customer in a form that meets the requirements of subsection (e) of this section.
- (2) Verification may be obtained by electronic authorization placed from the telephone number(s) which is (are) the subject of the change order(s) except in exchanges where automatic recording of the ANI from the local switching system is not technically possible; however, if verification is obtained by electronic authorization, the prospective telecommunications utility must:
 - (A) ensure that the electronic authorization confirms the information described in subsection (e)(3) of this section; and
 - (B) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change whereby calls to the toll-free number(s) will connect the customer to a voice response unit or similar mechanism that records the required information regarding the change, including automatically recording the ANI from the local switching system.

- (3) Verification may be obtained by the customer's oral authorization to submit the change order, given to an appropriately qualified and independent third party operating in a location physically separate from the marketing representative, that confirms and includes appropriate verification data (e.g., the customer's date of birth or mother's maiden name).
- (4) Verification may be obtained by sending each new customer an information package via first class mail within three business days of a customer's request for a telecommunications utility change provided that such verification meets the requirements of subparagraph (A) of this paragraph and the customer does not cancel service after receiving the notification pursuant to subparagraph (B) of this paragraph.
 - (A) The information package must contain at least the information and material as specified in 47 Code of Federal Regulations §64.1100(d) and this subparagraph which includes:
 - (i) a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week;
 - (ii) the name of the customer's current provider of the service that will be provided by the newly requested telecommunications utility;

- (iii) the name of the newly requested telecommunications utility;
- (iv) the type of service(s) that will be provided by the newly requested telecommunications utility
- (v) a description of any terms, conditions, or charges that will be incurred;
- (vi) the statement, "I understand that I must pay a charge of approximately \$ (industry average charge) to switch providers. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company. I also understand that my new telephone company may have different calling areas, rates and charges than my current telephone company, and by not canceling this change order within 14 days of the date that this information package was mailed to me I indicate that I understand those differences (if any) and am willing to be billed accordingly;
- (vii) the telephone numbers that will be switched to the newly requested telecommunications utility;
- (viii) the name of the person ordering the change;

- (ix) the name, address, and telephone number of both the customer and the newly requested telecommunications utility;
- (x) a postpaid postcard which the customer can use to deny, cancel or confirm a service order;
- (xi) a clear statement that if the customer does not return the postcard the customer's telecommunications utility will be switched to the newly requested telecommunications utility within 14 days after the date the information package was mailed by (the name of the newly requested telecommunications utility); and
- (xii) the statement, "Complaints about telephone service and unauthorized changes in a customer's telephone service provider ("slamming") are investigated by the Public Utility Commission of Texas. If a telephone company "slams" you and fails to resolve your request to be returned to your original telephone company as required by law, or if you would like to know the complaint history for a particular telephone company, please write or call the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, 512/936-7120, or toll-free within Texas at 1-888/782-8477. Hearing and speech-impaired individuals

with text telephones (TTY) may contact the commission at
512/936-7136."

(B) The customer does not cancel the requested change within 14 days
after the information package is mailed to the customer by the
prospective telecommunications utility.

(c) **Letters of Agency (LOA).** If a telecommunications utility obtains written
authorization from a customer for a change of telecommunications utility as
specified in subsection (d)(1) of this section, it shall use a letter of agency (LOA)
as specified in this subsection.

(1) The LOA shall be a separate or easily separable document containing only
the authorizing language described in paragraph (3) of this subsection for
the sole purpose of authorizing the telecommunications utility to initiate a
telecommunications utility change. The LOA must be signed and dated by
the customer of the telephone line(s) requesting the telecommunications
utility change.

(2) The LOA shall not be combined with inducements of any kind on the
same document; except that the LOA may be combined with a check if the
LOA and the check meet the requirements of subparagraphs (A)-(B) of
this paragraph.

- (A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.
 - (B) A check combined with an LOA shall not contain any promotional language or material but shall contain, on the front of the check and on the back of the check in easily readable, bold-faced type, type near the signature line, the following notice: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that the telecommunications utility will be providing).
- (3) LOA language.
- (A) The LOA must be printed clearly and legibly and use only the following language:

Figure 1: 16 TAC §23.106(e)(3)(A)
 - (B) In the LOA set out by subparagraph (A) of this paragraph, the telecommunications utility seeking authorization shall replace, in bold type, the words:
 - (i) "(new telecommunications utility)," with its corporate name;
 - (ii) "(type of service(s) that will be provided by the new telecommunications utility)," with the type of service(s) that it will be providing to the customer, and

- (iii) "I must pay a charge of approximately \$ (industry average charge)" with the text, "there is no charge" only if there is no charge of any kind to the customer for the switchover.
 - (4) The LOA shall not suggest or require that a customer take some action in order to retain the customer's current telecommunications utility.
 - (5) If any portion of a LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the LOA.
- (f) **Changes initiated by a customer.** In the case of a customer-initiated change of telecommunications utility, the telecommunications utility to which the customer has changed his service shall maintain a record of nonpublic customer specific information that may be used to establish that the customer authorized the change. Such information is to be maintained by the telecommunications utility for at least 12 months after the change and will be used to establish verification of the customer's authorization. This information shall be treated in accordance with the Federal Communications Commission (FCC) rules and regulations relating to customer-specific customer proprietary network information, and shall be made available to the customer and/or the commission staff upon request.
- (g) **Unauthorized changes.**

- (1) **Responsibilities of the telecommunications utility that initiated the change.** If a customer's telecommunications utility is changed and the change was not made or verified consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

- (A) return the customer to the telecommunications utility from which the customer was changed (the original telecommunications utility) where technically feasible, and if not technically feasible, take all action within the utility's control to return the customer to the original utility, including requesting reconnection to the original telecommunications utility from a telecommunications utility that can execute the reversal, within three business days of the customer's request;
- (B) pay all usual and customary charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;
- (C) provide all billing records to the original telecommunications utility that are related to the unauthorized provision of services to the customer within 10 business days of the customer's request to return the customer to the original telecommunications utility;
- (D) pay the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not

- occurred, within 30 business days of the customer's request to return the customer to the original telecommunications utility; and
- (E) return to the customer any amount paid by the customer in excess of the charges that would have been imposed for identical services by the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request to return the customer to the original telecommunications utility.

(2) **Responsibilities of the original telecommunications utility.** The original telecommunications utility from which the customer was changed shall:

- (A) provide the telecommunications utility that initiated the unauthorized change with the amount that would have been imposed for identical services by the original telecommunications utility if the unauthorized change had not occurred, within 10 business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;
- (B) provide to the customer all benefits associated with the service(s) (e.g., frequent flyer miles) that would have been awarded had the unauthorized change not occurred, on receipt of payment for service(s) provided during the unauthorized change; and

- (C) maintain a record related to customers that experienced an unauthorized change in telecommunications utilities that contains:
 - (i) the name of the telecommunications utility that initiated the unauthorized change;
 - (ii) the telephone number(s) that were affected by the unauthorized change;
 - (iii) the date the customer requested that the telecommunications utility that initiated the unauthorized change return the customer to the original carrier; and
 - (iv) the date the customer was returned to the original telecommunications utility.
- (h) **Notice of customer rights.**
 - (1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection in both English and Spanish as necessary to adequately inform the customer; however, the commission may exempt a telecommunications utility from the requirement that the information be provided in Spanish upon application and a showing that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish, in the notice, that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices.

- (2) Each notice provided as set out in paragraph (4)(A) of this subsection shall also contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

- (3) Customer notice. The notice shall state:

Figure 2: 16 TAC §23.106(h)(3)

- (4) Distribution and timing of notice.

- (A) Each telecommunications utility shall mail the notice to each of its residential and business customers within 30 days of the effective date of this section. In addition, the telecommunications utility shall send the notice to new customers at the time service is initiated, and upon customer request.

- (B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with the first publication of such directories subsequent to the effective date of this section; thereafter, the notice must appear in the white pages of each telephone directory published for the telecommunications utility. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

- (i) **Compliance and enforcement.**

- (1) **Records of customer verifications.** A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (d) - (f) of this section to the commission staff upon request.
- (2) **Records of unauthorized changes.** A telecommunications utility shall provide a copy of records maintained under the requirements of subsection (g)(2)(C) to the commission staff upon request.
- (3) **Administrative penalties.** If the commission finds that a telecommunications utility has repeatedly engaged in violations of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. For purposes of §§15.024(b) and (c), there shall be a rebuttable presumption that a single incident of an unauthorized change in a customer's telecommunications utility ("slamming") is not accidental or inadvertent if subsequent incidents of slamming by the same utility occur within 30 days of when the incident is reported to the commission, or during the 30-day cure period. Any proceeds from administrative penalties that are collected under this section shall be used to fund enforcement of this section.
- (4) **Certificate revocation.** If the commission finds that a telecommunications utility is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may

suspend, restrict, or revoke the registration or certificate of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state. For purposes of this section, a single incident of slamming may be deemed reckless if subsequent incidents of slamming by the same telecommunications utility occur during the 30-day grace period after an incident of slamming is reported to the commission regarding the initial incident.

- (j) Notice of identity of a customer's telecommunications utility.** Any bill for telecommunications services must contain the information contained in paragraphs (1)-(4) of this subsection in legible, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, the information contained in paragraphs (1)-(3) of this subsection must be contained on the first page of the bill to the extent possible. Any information that cannot be located on the first page must be displayed prominently elsewhere in the bill.

 - (1)** If a bill is for local exchange service, the name and telephone number of the telecommunications utility that is providing local exchange service directly to the customer.
 - (2)** If the bill is for interexchange services, the name and telephone number of the primary interexchange carrier.
 - (3)** In such cases where the telecommunications utility providing local exchange service also provides billing services for a primary

interexchange carrier, the first page of the combined bill shall identify both the local exchange and interexchange providers, as required by paragraphs (1) and (2) of this subsection; however, the commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

- (4) A statement, prominently located in the bill, that if the customer believes that the local exchange provider or the interexchange carrier named in the bill is not the customer's chosen interexchange carrier, that the customer may contact: Public Utility Commission of Texas, Office of Customer Protection, P. O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

§23.97. Interconnection.

(a)-(g) (No change.)

(h) Filing of rates, terms, and conditions.

(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.

(A) A CTU from which interconnection is requested shall file any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission shall make such agreement available for public inspection and copying within 10 days after the agreement is approved by the commission pursuant to subparagraphs (C) and (D) of this paragraph.

(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that it generally offers within the state pursuant to 47 United States Code §252(f) (1996). The commission shall make such statement available for public inspection and copying within 10 days after the statement is approved by the commission pursuant to subparagraph (E) of this paragraph.

(C)-(E)(No change.)

(2) (No change.)

(i) Customer safeguards.

- (1) Requirements for provision of service to customers.** Nothing in this section or in the CTU's tariffs shall be interpreted as precluding a customer of any CTU from purchasing local exchange service from more than one CTU at a time. No CTU shall connect, disconnect, or move any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §23.106 of this title, (relating to Selection of Telecommunications Utilities).

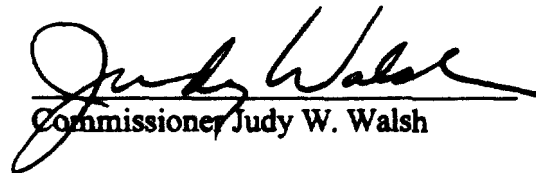
(2)-(3) (No change.)

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ISSUED IN AUSTIN, TEXAS ON THE 11th DAY OF SEPTEMBER, 1997.



Chairman Pat Wood, III



Commissioner Judy W. Walsh

Figure 1: 16 TAC §23.106(e)(3)(A).

Customer billing name: _____

Customer billing address: _____

Customer street address: _____

City, state, zip code: _____

Name of individual authorized to act for customer _____

Telephone number of individual authorized to act for customer: _____

By signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for the provision of (type of service(s) that will be provided by the new telecommunications utility) service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider designated above to effect the change.

Figure 1: 16 TAC §23.106(e)(3)(A)

I understand that I must pay a charge of approximately \$ (industry average charge) to switch providers. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company. I also understand that my new telephone company may have different calling areas, rates and charges than my current telephone company, and that by signing below I indicate that I understand those differences (if any) and am willing to be billed accordingly.

I authorize (name of new telecommunications utility) to provide (type of service(s) that will be provided by the new telecommunications utility) to my telephone number(s) listed below, and no others.

Telephone number(s) to be changed: _____

Initial here _____ if you are attaching a list of additional telephone numbers to be changed.

Figure 1: 16 TAC §23.106(e)(3)(A)

I certify that I have read and understand this Letter of Agency. I further certify that I am at least eighteen years of age, and that I am authorized to change telephone companies for services to the telephone numbers listed above.

Signed: _____ Date: _____

Figure 2: 16 TAC §23.106(h)(3).

Selecting a Telecommunications Carrier – Your Rights as a Customer.

The Public Utility Commission of Texas has directed each telecommunications utility to provide this notice to customers regarding your rights when selecting a telecommunications utility. Telecommunications utilities (telephone companies) are prohibited by law from switching you from one telephone service provider to another without your authorization, a practice commonly known as "slamming."

If you are slammed, you should contact your new provider -- the telephone company that switched you without authorization -- and request that it return you to your original telephone service provider.

Texas law requires a local or long distance telephone service provider (telephone company) that has slammed you to do the following:

1. Return you to your original telephone company within three business days of your request.
2. Pay all the usual and customary charges associated with returning you to your original telephone company within five business days of your request to be returned to your original telephone company.

Figure 2: 16 TAC §23.106(h)(3).

3. Provide all billing records to your original telephone company within 10 business days of your request to be returned to your original telephone company.
4. Pay the original telephone company the amount paid you would have paid to your original telephone company if you had not been slammed.
5. Refund to you, within 30 business days, any amount you paid over the amount that you would have paid for identical services by your original telephone company if you had not been slammed.

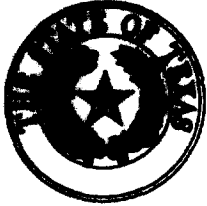
Please note that once your original telephone company has been paid by the slamming company, your original telephone company is required by law to provide you with all the benefits (e.g., frequent flyer miles) you would have normally received for your telephone use during the period in which you were slammed.

Complaints relating to slamming, the unauthorized change in a customer's telephone company, are investigated by the Public Utility Commission of Texas. If a telephone company slams you and fails to resolve your request to be returned to your original local or long distance telecommunications service provider as required by law, or if you would

Figure 2: 16 TAC §23.106(h)(3).

like a complaint history for a particular telephone company, please write or call the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Be advised that you may have additional rights under state and federal law. Please contact the Public Utility Commission if you would like further information about these additional rights.



Public Utility Commission of Texas

1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
512 / 936-7000 • (Fax) 936-7003
Web Site: www.puc.state.tx.us

Pat Wood, III
Chairman

Judy Walsh
Commissioner

September 11, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street N. W., Room 222
Washington, D. C. 20554

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RE: CC Docket No. 94-129, Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

Dear Secretary:

Enclosed for filing are the original and eleven (11) copies of the Comments of the Public Utility Commission of Texas in the above-captioned matter. Also enclosed is an electronic copy of the filing as requested. For your review and information we have enclosed a copy of newly adopted PUC Substantive Rule 23.106, relating to Selection of Telecommunication Utilities, and a copy of Senate Bill 253, relating to Selection of a Telecommunications Utility by a Customer.

Sincerely,

Bret Slocum, Director-Legal Division
Office of Regulatory Affairs

Enclosures



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EXECUTIVE DIRECTOR (512) 936-7040
POLICY DEVELOPMENT (512) 936-7200
REGULATORY AFFAIRS (512) 936-7300

CUSTOMER PROTECTION (512) 936-7150
MEDIA RELATIONS (512) 936-7135
CUSTOMER HOTLINE (512) 936-7120
(888) 782-8477